

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 375 Reimbursement of Federal Excise Taxes on Motor Fuel
SPONSOR(S): Civil Justice & Courts Policy Committee, Insurance, Business and Financial Affairs Policy Committee; and Legg
TIED BILLS: **IDEN./SIM. BILLS:** SB 1024

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Insurance, Business & Financial Affairs Policy Committee	16 Y, 0 N, As CS	Snider	Cooper
2)	Civil Justice & Courts Policy Committee	9 Y, 0 N, As CS	Crocker	De La Paz
3)	General Government Policy Council		Snider	Hamby
4)				
5)				

SUMMARY ANALYSIS

This bill establishes a framework for the reimbursement of the federal excise tax on motor fuels by regulating contractual agreements between private parties. It will have no effect on the collection of federal taxes.

The bill permits oil dealers (e.g. gas stations) to withhold reimbursement of federal excise taxes on motor fuels to oil terminals until the day before the terminal must remit the tax to the Internal Revenue Service. This will more closely align the payment of the federal tax with the statutory method for payment of the state excise tax on motor fuel. At present, a reimbursing party may wait until the day before the taxes are due before reimbursing the party responsible for remitting the taxes to the Department of Revenue.

The bill is not expected to have a fiscal impact on state or local governments.

The effective date of the bill is July 1, 2009.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

This bill creates section 686.701, F.S., to provide a reimbursement method for the federal excise tax on motor fuels. It aligns the process for reimbursement of the federal excise taxes more closely with the method used for reimbursement of state excise taxes. At present, retail oil dealers (e.g. convenience stores, gas stations, etc.) reimburse oil terminals for the federal excise tax on motor fuels. This situation is contractually arranged and is commonly required to be reimbursed at the time of purchase of the fuel. However, the reimbursement for the Florida excise tax on motor fuels need not be reimbursed until the day before the taxes are due to be remitted to the Department of Revenue.¹

Current law provides definitions for the involved parties including "wholesalers," "retail dealers," and "terminals," and other related entities that this bill will in practice effect.² Current law also requires licensure of these entities.

The bill requires a written notice of the reimbursing party's intent to exercise the option granted in this bill at least thirty days before the reimbursing party will exercise the right.

The bill permits the reimbursed party to demand security for the payment of the taxes in proportion to the amount that the taxes represent compared to the contract as a whole (i.e. if taxes represent 1% of the total contract, the party to be reimbursed may require security in the amount of 1% of the taxes due). The reimbursed party is also permitted to require reimbursement be made via electronic transfer of funds, but is proscribed from changing other payment terms without a valid business reason.

The bill applies to continuing contracts with no fixed expiration date and which are in effect on July 1, 2009 and to contracts entered into or renewed after July 1, 2009. Contracts that are in effect prior to July 1, 2009 and which have a fixed expiration date shall be governed by present law.

The effective date of this bill is July 1, 2009.

B. SECTION DIRECTORY:

Section 1: Creates s. 686.701, F.S. relating to reimbursement for taxes.

Section 2: Provides for an effective date of July 1, 2009.

¹ s. 206.431(5)(a), F.S.

² s. 206.01, F.S.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: This bill does not appear to have a fiscal impact on state government.
2. Expenditures: This bill does not appear to require any expenditure by state government.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: This bill does not appear to have a fiscal impact on local governments.
2. Expenditures: This bill does not appear to require any expenditure by local governments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill allows oil dealers to wait to reimburse federal excise taxes on motor fuel until the day before the party responsible for remitting the taxes to the Internal Revenue Service must remit payment. At present, the reimbursed party is able to retain the funds for some time before remitting to the IRS, thus allowing them to accrue interest or otherwise "float" the moneys. The bill allows oil dealers (e.g. gas stations) within the state to retain these moneys until the day before they are due, thus allowing them to benefit from the same "float" on the tax moneys. Thus, the bill will have an effect on the private accounts of oil terminals/suppliers and oil dealers, but this amount is indeterminable.

D. FISCAL COMMENTS:

None

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure to funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

Contract Clause

The provisions of this bill will alter the terms of existing contracts, if the contract does not have an expiration date. Contracts with expiration dates would be unaffected. Both the United States and Florida Constitutions contain limitations on the state's ability to alter or impair existing contracts.³

The U.S. Supreme Court has developed a test for determining whether a contract has been unconstitutionally impaired. The first step is to determine whether the impairment is significant.⁴ If a significant impairment is determined, the severity of the impairment will determine the level of scrutiny afforded by the court.⁵ If there is no substantial impairment of a contractual obligation, then the inquiry

³ See U.S. Const., Art. I, Sec. 10, clause 1; Fla. Const., Art. I, Sec. 10.

⁴ Energy Reserves Group, Inc. v. Kansas Power and Light Co., 103 S.Ct. 697 (1983) (citing Allied Structural Steel Co. v. Spannaus, 98 S.Ct. 2716 (1978)).

⁵ Energy Reserves Group, (quoting Allied Structural Steel).

ends; the courts have held that the Contract Clause applies only to laws which *substantially* impair contract rights.

The next step in an inquiry, if significant impairment has been determined, is whether the state had “a significant and legitimate purpose behind the regulation, such as the remedying of a broad and general social or economic problem.”⁶

The final step is to determine whether the law is reasonable and appropriate for its intended purpose.⁷

Florida’s Contract Clause interpretations have generally mirrored the United States Supreme Court’s interpretation of the Contract Clause of the Constitution of the United States.⁸

B. RULE-MAKING AUTHORITY:

There is no grant of rulemaking authority in this legislation.

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On March 6, 2009, the Insurance, Business, and Financial Affairs Policy Committee amended the bill. This amendment changed the bill’s placement in the Florida Statutes from Ch. 206 to Ch. 686.

On March 27, 2009, the Civil Justice and Courts Policy Committee adopted an amendment to the bill. The amendment removed reference to 26 U.S.C. s. 4091 as the section no longer exists.

⁶ *Energy Reserves Group* at 411-13.

⁷ *Id.* at 413.

⁸ See *Pomponio v. Cladridge of Pompano Condominium, Inc.*, 378 So. 2d 774 (Fla. 1980) (wherein the Florida Supreme Court chose to adopt a methodology akin to that of the U.S. Supreme Court in determining the constitutionality of contractual impairments).